



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0111]

RIN 1625-AA00

Safety Zone, Atlantic Ocean; Virginia Beach, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of the Atlantic Ocean in Virginia Beach, VA on September 11, 2014. This safety zone will restrict vessel movement in the specified area during the Virginia Symphony Orchestra Fireworks. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the fireworks display.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number (USCG-2014-0111) using any one of the following methods:

- (1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757) 668-5581, e-mail Hector.L.Cintron@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2014-0111] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number [USCG-2014-0111] in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a

Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Virginia Symphony Orchestra Firework Display over the Atlantic Ocean in Virginia Beach, Virginia, is an annual event that has previously been held on Wednesdays. It is typically included in the table to 33 CFR 165.506, at section (c) event number "15," which provides a recurring safety zone for certain annual events falling on Wednesday, Friday, Saturday, Sunday. However, in 2014, the organizers plan to hold it on a Thursday. The perimeter of the safety zone and the enforcement times remain the same as that from the table, only the day of the week will change.

C. Basis and Purpose

The Virginia Symphony Orchestra will host a fireworks display over the Atlantic Ocean in Virginia Beach, VA. The fireworks debris fallout area will extend over the navigable

waters of the Atlantic Ocean. A fleet of spectator vessels are anticipated to gather nearby to view the fireworks display. Due to the need to protect mariners and spectators from the hazards associated with the fireworks displays, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted. Vessels may not enter the regulated area unless they receive permission from the Captain of the Port or his Representative.

D. Discussion of the Proposed Rule

There will be a temporary change to the Table in § 165.506 (c), to add event number "25." The Coast Guard will establish a safety zone on the waters of the Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at position 36°-51'-12"N / 075°-58'-06"W (NAD 1983), in the vicinity of Virginia Beach, Virginia. This safety zone will be enforced on September 11, 2014 between the hours of 9:15 p.m. and 9:45 p.m. Access to the safety zone will be restricted during the specified dates and times.

Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone during the time frame listed. The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of

notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the safety zone on the Atlantic Ocean in the vicinity of Virginia Beach, VA from 9:15 p.m. until 9:45 p.m. on September 11, 2014. Although these regulations prevent traffic from transiting a portion of the Atlantic Ocean during these events, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative

plans for transiting the affected area.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in waters of the Atlantic Ocean during the outlined timeframe.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) the safety zone will only be in place for a limited duration, and (ii) before the enforcement period, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule will not cause a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone. This proposed rule is categorically excluded from further review under paragraph 34-g of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard

proposes to amend 33 CFR part 165 as follows:

PART 165 -REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0111 to read as follows:

§ 165.T05-0111 Safety Zone, Atlantic Ocean; Virginia Beach, VA.

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector Hampton Roads.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) Location. The following area is a safety zone:
specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25-10, all waters of the Atlantic Ocean within 1000 yards of 36°-51'-12"N / 075°-58'-06"W (NAD 1983) in Virginia Beach, VA.

(c) Regulations.(1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate

vicinity of this safety zone shall:

(i) Contact on scene contracting vessels via VHF channel 13 and 16 for passage instructions.

(ii) If on scene proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668-5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period: This section will be enforced from 9:15 p.m. until 9:45 p.m. on September 11, 2014.

Dated: March 13, 2014

John K. Little
Captain, U.S. Coast Guard
Captain of the Port Hampton Roads

[FR Doc. 2014-07609 Filed 04/04/2014 at 8:45 am; Publication

Date: 04/07/2014]